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PACIFIC  **TELESIS**
Group-Washington

January 17, 1995

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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Dear Mr. Caton:

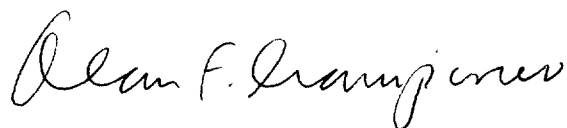
Re: CC Docket No. 87-266 - Telephone Company-Cable Television Cross-Ownership
Rules, Section 63.54-63.58

RM-8221 - Amendments of Part 32, 36, 61, 64 and 69 of the Commission's Rules
to Establish and Implement Regulatory Procedures for Video Dialtone Service

On behalf of Pacific Telesis Group, Pacific Bell, and Nevada Bell, please find enclosed an original and six copies of their "Reply Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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COMMUNICATIONS DIVISION
OFFICE OF THE SECRETARY

In the Matter of

TELEPHONE COMPANY-CABLE TELEVISION
Cross-Ownership Rules,
Section 63.54-63.58

CC Docket No. 87-266

and

Amendments of Parts 32, 36, 61, 64, and 69 of the
Commission's Rules to Establish and Implement
Regulatory Procedures for
Video Dialtone Service

RM-8221

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**REPLY COMMENTS OF THE PACIFIC TELESIS GROUP,
PACIFIC BELL AND NEVADA BELL**

Pacific Telesis Group, Pacific Bell and Nevada Bell, (hereinafter "Pacific")
respond to comments filed in response to the Commission's Third Further Notice of Proposed
Rulemaking ("FNPRM") in the above-captioned proceeding.¹

- I. THE COMMISSION SHOULD MAINTAIN ITS POLICY OF TECHNOLOGY
NEUTRALITY AND PERMIT CARRIERS TO DESIGN THEIR SYSTEM TO
MEET MARKET EXPECTATIONS.

¹ Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54 - 63.58 and
Amendments of Parts 32, 36, 661, 64 and 69 of the Commission's Rules to Establish and
Implement Regulatory Procedures for Video Dialtone Service, CC Dkt. No. 87-266, Second
Report & Order, Recommendation to Congress and Second Further Notice of Proposed
Rulemaking, 7 FCC Rcd. 5781 (1992) ("Second Report & Order"); Memorandum Opinion and
Order on Reconsideration and Third Further Notice of Proposed Rulemaking, ("FNPRM
Order"), FCC 94-269, November 7, 1994.

Most commenting parties agree that VDT carriers should be permitted flexibility to design their networks to meet consumer expectations.² Because of the variations among VDT providers in, for example, architectures and market preferences, one technology may not be suitable or advantageous to all VDT providers. Many consumers will require services comparable to what they receive today. In order to achieve the level of marketplace acceptance that will enable VDT to become a viable competitor to cable, VDT offerings must include analog services, which are critical to meeting consumer expectations.

The disadvantages of an all digital system at this time are documented by the comments.³ The record shows that requiring an all digital system would sidetrack progress in accomplishing the Commission's video dialtone (VDT) goals in the near term. While digital video technology is rapidly advancing and the number and types of digital video applications increasing, the record shows that digital technology should not be required as the sole basis for a local exchange carrier's near term participation in the video marketplace. Digital standards are not yet developed.⁴ Equipment necessary for digital services are not widely or inexpensively available. An all digital technology at this time would increase costs for both network and consumer equipment (i.e., a set top converter necessary to convert digital transmission for

² Comments of United and Central Telephone Companies, GTE, Bell Atlantic, Pacific Bell and the National Association of Broadcasters ("NAB"), all filed on December 16, 1994.

³ Comments of Ortel Corp. Compression Labs, Inc., GTE, and AT&T, all filed on December 16, 1994.

⁴ Comments of the Consumer Electronics Group of the Electronic Industries Association, dated December 16, 1994 ("CEG/EIA").

reception by analog TVs).⁵ We agree that the Commission should continue its policy of technology neutrality and permit market forces to shape a carrier's technological deployment.

II. SHARED CHANNEL ARRANGEMENTS WILL ASSIST IN MEETING ANALOG CAPACITY NEEDS.

The record supports the Commission's conclusion that shared channel arrangements would be beneficial to consumers, programmer-customers and video dialtone providers. Commentors support channel sharing as a means to increase efficient use of analog capacity for video dialtone systems. We agree. Pacific Bell's proposed Standard Service channel was designed for that purpose.⁶ Designating off-air programming to be carried on the shared channels offers the greatest possibility to expand the capacity of the limited analog channels. Market research indicates that the availability of off-air programming is very important for end user selection. Thus, making off-air broadcasting available for sharing provides the greatest opportunity to reduce redundancy, free up channels and increase the opportunity for analog programming diversity. We also endorse Commentors' suggestions that in the event that multiple applicants are interested in administering the shared channels, the Commission permit the carrier to designate the administrator which best meets objective standards designed to ensure availability of high quality programming to all programmer services.⁷

⁵ AT&T, p. 4.

⁶ Pacific proposes that a block of 12-15 channels would be resold by a customer-programmer (the administrator) to other customer-programmers on Pacific Bell's video dialtone network.

⁷ Comments of Liberty Cable, December 16, 1994, p. 3; Comments of the Southern New England Telephone, December 16, 1994, ("SNET"), p. 5.

SNET's proposal that the administration of the channel sharing arrangement be undertaken without profit is not consistent with its proposal that the administrator act as a wholesaler and moreover, is unrealistic. Without profit, there is little if any incentive to act as an administrator. Market conditions should be permitted to set the resale price of the shared channels to other programmer-customers as long as uniform prices and terms are available to all programmer-customers.

Moreover, the specifics of a shared channel arrangement which meets the Commission's principles (such as the number of channels or the availability of a single versus a block of channels) should be left to the carrier who can tailor its offering to meet capacity and market needs. For example, channel by channel availability for shared channels would not be easily accomplished in all architectures.⁸ For Pacific Bell's proposed VDT system, channel by channel sharing would not be feasible. Because Pacific Bell's proposed system provides channels 2-13 in the clear, access to one channel would provide the end user with access to all in-the-clear channels. Interdiction of these shared channels would add significant cost and delay for system redesign. In addition, mandating a channel by channel sharing arrangement would have the Commission dictating a carrier's technology, contrary to the Commission's stated position of technology neutrality.

HBO's suggestion that any programmer may seek to have its program distributed on a channel-shared basis is not precluded by Pacific's channel allocation plan.⁹ Even those

⁸ SNET recommends that the Administrator be required to resell its programming on a channel by channel basis. SNET, p. 8.

⁹ Comments of Home Box Office In the Third Notice of Proposed Rulemaking, December 16, 1994, ("HBO") p. 10.

customer-programmers subscribing to channels that are not within our Standard Service Channels can arrange with other customer-programmers to package their offerings.

The need for the channel administrator to be independent from the VDT carrier was recommended by several commentors.¹⁰ We have previously indicated our willingness to act as the channel administrator if permitted by the Commission. But, in light of existing Commission rules, we have accepted the request of California Standard Television Corp. (“CSTC”) to act as the administrator for the Shared Services Channels. Contrary to Adelphia’s remark, CSTC is not affiliated with Pacific Bell.¹¹

¹⁰ HBO, p. 11.

¹¹ Comments of the Joint Parties, December 16, 1994, p. 5, n.6.

III. PREFERENTIAL TREATMENT SHOULD NOT BE MANDATORY.

Many commentators agree with that the Commission should not mandate special treatment for certain classes of video programmers. Instead, the Commission should permit a carrier to offer tariffed services that reflect a carrier's response to the needs of its marketplace.¹² However, if the Commission requires preferential treatment, the eligible class must be carefully defined to avoid creating capacity shortages. A broad definition of a preferred class will reduce the capacity available for non-preferred video providers. Preferential access to digital capacity, however, is not necessary.¹³ Given the significant number of digital channels proposed in VDT applications, digital capacity shortfall is unlikely.

Incremental cost has been suggested as the basis for preferential rates. We agree that the discussion of preferential rates is premature given that the level of pricing, as set by tariffed rates, has not yet been established.¹⁴ Until the price of VDT is determined, the affordability of services is an open question.

CBA's suggestion that low power television (LPTV) stations should have reasonable and affordable rates for leased access can be met without preferential treatment.¹⁵ Digital channels, which will be available in significant numbers, can be used to meet the LPTV industry's capacity needs. Digital capacity will also provide cost effective distribution in the top

¹² Comments of Bellsouth, NYNEX, District of Columbia PSC, Center For Media Education, et. al., all filed on December 16, 1994.

¹³ Comment of California Cable TV Association on Third Further Notice of Proposed Rulemaking, December 16, 1994.

¹⁴ The Commission should not adopt a proposal for free transport for local broadcasters, or mandate free transport for PEG providers, however. NAB, p. 6. Comments of the City & County of Denver, Colorado, December 16, 1994, p. 5.

¹⁵ Comments of the Community Broadcasters Association, December 16, 1994, ("CBA").

Metropolitan Statistical Areas (“MSA”). Offering greater transport efficiencies, digital broadcast service will be significantly more affordable to the LPTV programmer than current alternatives. The abundance of digital capacity, in fact, will open a tremendous distribution opportunity for LPTV programmers to serve the top MSAs.

IV. CABLE RULES SHOULD NOT APPLY TO VDT TRANSPORT SERVICE.

Several commentors have suggested the Commission apply provisions of the Cable Act to VDT offerings.¹⁶ The Commission must scrutinize these suggestions carefully. For example, some suggest that Cable Act provisions for must carry, syndicated exclusivity, sports blackout, and network nonduplication and other Cable Act provisions should be extended to VDT services.¹⁷ This suggestion must be rejected. These cable provisions relate to the content selected by and within the cable operator’s control. VDT providers, on the other hand, are currently completely prohibited from selecting or controlling content transported by its VDT system. Unlike cable providers, VDT carriers cannot be content gatekeepers. With no involvement with content, a VDT carrier cannot be held accountable for content based regulation. United Video’s assertion that extending these regulations to VDT is consistent with Congressional intent because recent (failed) legislation included similar provisions is without merit. The Supreme Court has stated that “Congressional inaction lacks ‘persuasive significance’

¹⁶ See Comments of the Alliance for Community Media and the Office of Communication of the United Church of Christ (Collectively, the “PEG Access Coalition”), December 16, 1994 (suggesting extension of PEG and franchise obligations to VDT providers.) p. 14; Compaq, (parity with cable compatibility docket rules for cable systems.

¹⁷ Comments of United Video in the Third Notice of Proposed Rulemaking, dated December 16, 1994, pp. 6, 7; National Assn. of Broadcasters, pp. 2-5.

because ‘several equally tenable inferences may be drawn from such inaction.’ ”¹⁸ In the context of video dialtone, content limitations are better left to the program owner, who in permitting their programming to be provided via a VDT system, can negotiate with programmer-customers for desired carriage limitations.¹⁹

The Consumer Electronics Group of the Electronic Industries Association (“CEG/EIA”) suggests that set top boxes necessary for VDT systems should be compatible with the decoder interface under development which will be required for cable TV.²⁰ In the Cable Compatibility docket, the Commission required the establishment of a decoder interface between cable transmission systems and consumer electronics to eliminate the need for consumers to obtain set-top converters in order to use certain basic television features.²¹ The CEG/EIA suggest that the Commission require video dialtone systems to be compatible with the decoder interface specifications currently under development.²² Similar to CEG/EIA, Viacom urged the Commission to apply the standards to be established to other multichannel video programming distributors/ systems. The Commission declined, deferring the issue to a future proceeding. While we agree with the advantages and need for compatibility between consumer equipment and transmission systems, we also believe that the Commission is correct in reserving the matter for more extensive discussion in a subsequent proceeding.

¹⁸ Pension Benefit Guaranty Corp. v. LTV Corp., 496 U.S. 633, 650, 1990 (quoting United States v. Wise, 370 U.S. 405, 411 (1962)).

¹⁹ Comments of Viacom International, Inc., December 16, 1994, pp. 9, 10.

²⁰ Comments of the Compaq Computer Corporation, December 16, 1994 (“Compaq”).

²¹ Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992, ET Docket No. 93-7, First Report and Order, 9 FCC Rcd 1981, 1988-89 (1994).

V. CONCLUSION

For the reasons discussed above, the Commission should permit carriers the flexibility to design their VDT networks to meet market needs and consumer expectations. The record clearly does not support requiring an all digital system. On the other hand, shared channel arrangements were supported as a means to gain efficiency for limited analog capacity. The Commission should not, however, establish specifics for such arrangements but permit carriers to determine the specifics such as the number structure of the shared channel arrangements.

²² In that proceeding, Pacific Bell urged that video dialtone providers should participate in setting the standards for consumer equipment and transmission equipment. Pacific Bell Comments, dated January 25, 1994; Pacific Bell Reply Comments, dated February 16, 1994.

Similarly, carriers should be permitted to provide tariffed services which offer preferential treatment at the carrier election. Finally, Cable Act provisions related to content should not be extended to VDT services. Content limitations should be controlled by the content owner.

Respectfully submitted,

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Date: January 17, 1995

CERTIFICATE OF SERVICE

I, Chuck Nordstrom, hereby certify that copies of the foregoing "REPLY COMMENTS OF THE PACIFIC TELESIS GROUP, PACIFIC BELL AND NEVADA BELL" concerning CC Docket No. 87-266 were served by hand or by first-class United States mail, postage prepaid, upon the parties appearing on the attached service list this 17th day of January, 1995.

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Chuck Nordstrom

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